

REMARKS ON AMENDMENTS

Claims 1-12 have been canceled to overcome the objections to form per section 112 and replaced with claims 13 to 27 drawn therefrom and restated in clearer English. This should overcome the objections of the Examiner per form. No new matter has been added not present in the prior claims and specification.

SECTION 102 OBJECTIONS

The examiner rejected claims 1-4 now drawn as claim 13 and subordinate claims per 35 USC §102(B) per Tseng.

Tseng is formed of wires that are wound on a mandrel and requires a complicated winding and welding to manufacture and yields a stent with multiple connecting wires in many pieces.

To the contrary, applicant's device is formed of a single unitary structure from a tube with a curved planar sidewall (much like a pipe) defining an axial interior along a length. The solid curved planar sidewall, using a laser or other cutting tool, has voids formed therein which define a plurality of adjacently positioned ring shaped elastic wall segments. (Page 7 of application)

Also formed in the cutting process of the initial solid tube, are a plurality of connector devices which communicate across the gaps and link the wall segments. Especially novel is cutting the tube to form these connector devices in an "S" shape

to provide a means to direct the force along a line and absorb force. (Page 10 of application).

Also formed by the cutting of the solid tube sidewall, and the individual connector devices, is a series of aligned connector devices along a length of the sidewall of the body to form at least one continuous longitudinal flange.

The entire structure of applicant's device is thus formed from a unitary tube by placing voids and gaps therein to achieve the wall segments and aligned connector devices with the "S" shaped center sections.

The cited device is not unitary in structure but instead a plurality of hundreds of small soft bendable wires. The linear connections between the various zig zag wire formations are straight and lack the "S" curve of applicant's device. Further, there is no solid or unitary sidewall to the cited device since it is formed of many mandrel bent wires which once removed from the mandril are multiple pieces.

"Anticipation requires the presence, in a single prior art reference, disclosure of, *each and every element*, of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v.*

American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984)

The cited art, lacking the unitary structure and solid sidewall with voids, and lacking the "S" shaped connectors which provide critical function to the formed unitary structure, does not have each and every element of applicant's device .

As such the rejection pursuant to section 102 is respectfully traversed.

REMARKS AND CONCLUSION

Applicants' device claims elements providing function, which are neither taught nor suggested in the cited prior art. Additionally, Applicant as noted in the specification, considers the improvement to be substantial in that it provides an especially strong stent to resist forces during implant and is much more easily constructed using tubing and laser cutting. As such Applicant feels it is a significant advance in stents and provides great benefits to the end user and patient.

However, even if the Examiner does not consider Applicant's claimed device a great advance in the crowded art, it has been established that one should not be deprived of patent protection where it can be shown that *any genuine improvement* has been made, on comparison, with other inventions in the art, even if the improvement is slight, or lacks the appearance of a great advance in the art. In re Lange, 128 USPQ 365, the CCPA on page 367 stated that:

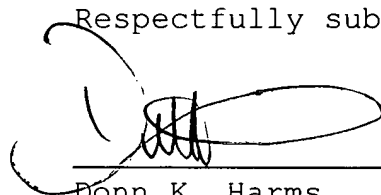
"We think that the present application is a distinct improvement of Jezalik and represents an advance in the art not obvious, having patentable novelty. The art is a crowded and comparatively simple on and in such an art, great advances are not to be expected. However patentability will not be denied to an invention which accomplishes a small, but nevertheless genuine improvement not though of by others.."

Further, the CCPA in the case of re Meng and Driessen, 181 USPQ 94, on page 97, reiterated the principal that, even though the invention seems a simple advance over prior art, *after the fact*, simplicity, particularly in a crowded art, argues *for*, rather than against, patentability.

Applicants' device provides genuine improvement in the stent art, and even where the improvements are considered simple in a crowded art, and not major by the Examiner, Applicants' device provides improvements that argue *for* patentability. As such, all claims of the application should now be in position for allowance.

Finally, should the Examiner have suggestions to more clearly define the claims to more clearly define the patentable subject matter, and hasten approval, the Applicant's attorney would be most receptive to such by telephone or Examiner's amendment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Donn K. Harms', is written over a horizontal line.

Donn K. Harms
Reg No 38,911
Attorney for Applicant

12702 Via Cortina, Ste. 100
Del Mar, CA 9014
Tel: (858) 509-1400
Fax: (858) 509-1677

12/07/06